DOCUMENT # 5589
ADOPTED

MEMORANDUM **JULY 14, 1993**

TO: BOSTON REDEVELOPMENT AUTHORITY BOARD AND
PAUL L. BARRETT, DIRECTOR

FROM: BRIAN DE LOREY, ASSISTANT DIRECTOR FOR
ECONOMIC DEVELOPMENT
MICHAEL BARTOSIAK, ASSISTANT DIRECTOR FOR
REAL ESTATE SERVICES

SUBJECT: TEMPORARY LICENSE FOR USE OF SLIVER PARCEL OF LAND FOR OUTDOOR PATIO USE

EXECUTIVE SUMMARY: Request authorization to execute a License Agreement with Steaming Kettle Coffee Shop located at 65 Court Street, for use of a portion of City Hall Plaza, containing 200 square feet to be used for a seasonable outdoor sidewalk cafe from May 1st to October 31st each year.

Ms. Aurelia S. Rita, proprietor of the Steaming Kettle Coffee Shop located at 65 Court Street, has requested the use of a sliver portion of land adjacent to the Steaming Kettle on City Hall Plaza for outdoor patio use. This portion of City Hall Plaza in the Government Center Urban Renewal Area containing 200 square feet will be used as a seasonal outdoor cafe by the patrons of the Steaming Kettle Coffee Shop. This use will provide added color and vitality to the area, and will provide an additional venue to the existing adjacent license at Au Bon Pain.

Steaming Kettle has agreed to maintain the licensed area and to provide an eight foot vehicular and pedestrian passage way. The license area will be limited to a maximum of seven tables. Steaming Kettle has agreed to pay the Authority $330 per month for a period annually of May 1st to October 31st. This amount is similar to rentals of other sidewalk cafes.

An appropriate vote follows:

VOTE: That the Director be authorized to execute a License Agreement with Steaming Kettle Coffee Shop for a certain portion of City Hall Plaza, containing 200 square feet to be used for a seasonal outdoor sidewalk cafe limited to seven (7) tables at a monthly license rental of $330.00 for a period of May 1st to October 31st each year; said License shall provide that the Licensee shall obtain liability insurance naming the BRA as an additional insured in all policies, in accordance with the BRA's usual form. Said License Agreement is to contain the expressed provision that no obligation on the part of the BRA, direct or indirect, is to be construed beyond this temporary tenancy. Said License to contain the BRA's usual terms and conditions and such other terms and conditions as the Director deems appropriate and in the best interest of the BRA and said License to incorporate agreement to maintain the four above grade flower planters adjacent to their proposed License Area.

LICENSE AGREEMENT

BY AND BETWEEN

BOSTON REDEVELOPMENT AUTHORITY

AND

T.S.K., INC. d/b/a STEAMING KETTLE COFFEE SHOP

This Agreement is made as of the ____ day of July, 1993 by and between the Boston Redevelopment Authority, hereinafter called the Licensor, and T.S.K., Inc. d/b/a Steaming Kettle Coffee Shop hereinafter called the Licensee.

A license to occupy the License Area, as generally described in Exhibit A attached to this Agreement, is approved subject to the following terms and conditions:

1. The License Area is to be used solely for the temporary use of a certain portion of City Hall Plaza containing approximately 200± square feet adjacent to the "Sears Crescent Building" in Government Center for seasonal outdoor sidewalk cafe limited to seven (7) tables for patrons of T.S.K., Inc. d/b/a Steaming Kettle Coffee Shop for a period of May 1st to October 31st each year.

   The License Area is to be used solely for an outdoor cafe with table sit down service only and no other commercial activities or sub-letting is permitted within said area. The Licensee acknowledges and agrees that no take-out or window service shall be made directly to customers from the window openings onto the License Area.

   The License is subject to cancellation or amendment by the Licensor on thirty (30) days written notice to the Licensee.

2. The Licensee agrees that it is not eligible for relocation benefits.

3. The License Area is to be vacated on thirty (30) days written notice by the Licensor. No obligation on the part of the Licensor direct or indirect is to be construed beyond this temporary license.

4. The License Fee shall be $330.00 per month, payable in advance on the first day of each month, commencing July 1, 1993 to October 31, 1993. Upon execution of this Agreement, the Licensee shall deposit with the Licensor a sum equal to one month's License Fee, to be retained by the Licensor until sixty days after the termination of this Agreement in order to insure the satisfactory completion of all the terms and conditions of this Agreement, and/or also deposit

with the Licensor a bond or cash deposit in the amount as may be required in the Special Conditions attached to this License to assure restoration of the property to its condition at the time of initial occupancy by the Licensee or as may be required by the said Special Conditions. No interest shall be paid to the Licensee on said deposit. Any portion of the License Fee remaining unpaid for a period of thirty days following its due date, the validity of which has not been contested in writing by the Licensee within said thirty day period, may, without further authorization, be deducted from any funds that are due or maybe due the Licensee from the Licensor. Any monthly installment of the License Fee, which has not been paid by the Licensee within thirty (30) calendar days of the due date shall be subject to an interest charge of 1.5% per month on the outstanding balance.

5. The Licensee shall indemnify and save harmless the Licensor from all suits, actions, claims, demands, damages or losses, expenses, and cost of every kind and description to which the Licensor may be subjected to or put by reason of injury (including death) to persons or property resulting from, in connection with, or growing out of any act of commission or omission of the Licensee, its agents, servants, employees,visitors, guests, contractors, subcontractors, or any and all other persons or corporations dealing with the Licensee in any way in the occupancy and use of the License Area. At the request of the Licensor,the Licensee shall initiate and complete all activities, including any legal proceedings, necessary to effect the resolution of any such suits, actions, claims, or demands, except as set forth herein.

6. The Licensee shall carry for the term of this License comprehensive public liability insurance insuring the Licensor and the Licensee against all claims and demands for personal injury and property damage with respect to the License Area, with limits of combined single limit of One Million ($1,000,000) Dollars, and Two Million ($2,000,000) Dollars aggregate. The Licensor shall be named as an additional insured in all policies for such insurance, and the Licensee shall furnish a certificate of such insurance to the Licensor prior to taking occupancy of the License Area.

7. The Licensee shall take possession of the License Area in "as-is" condition on the date of this License Agreement. The Licensee shall not commit or suffer waste or impairment of the License Area property.

8. The Licensee agrees to maintain the License Area in a clean, safe and orderly manner. No accumulation of litter, trash, debris or other disposable material will be permitted on the premises.

9. The Licensee covenants that it will not occupy or use the License Area,nor allow it to be occupied or used for any purposes other than those for which it is customarily used, nor in any way to occupy or use the property, nor allow it to be

occupied or used in other than a proper or fitting manner, nor in a manner contrary to any law of the Commonwealth or to any ordinance or by-law of the City of Boston.

10. The Licensee agrees to assume all maintenance expenses including sewer and water charges and Licensee will have complete responsibilities for compliance with all municipal codes and ordinances. During the term of this License Agreement, the Licensee shall pay directly to the proper persons or authorities when due all charges with respect to the License Area, whether called charges, taxes, assessments, fees, or otherwise, for utility services, water and sewer use, taxes, betterment assessments, and other charges, in order that the License Fee hereunder shall be absolutely net to the Licensor.

    The Licensee shall be solely responsible for all maintenance, security, and other services required to keep the License Area in good, safe, and attractive condition and repair. All fixtures, effects, equipment, and property of any kind of the Licensee, and of all persons claiming through or under the Licensee, shall be at the sole risk of the Licensee.

11. The Licensee agrees to comply with the Special Conditions outlined on the attached sheet entitled "Special Conditions", and further agrees to comply with any other reasonable rules and regulations as the Licensor shall establish from time to time upon notice to the Licensee.

12. Failure to pay the License Fee or failure to comply with the general and special conditions will terminate this agreement forthwith and the Licensee agrees to surrender the premises peacefully, and further agrees not to oppose or contest eviction proceedings when notified to vacate or when notified that the Agreement has been terminated.

13. This License may not be assigned, transferred, mortgaged or encumbered in any way without the specific written permission of the Licensor.

14. No fixtures shall be installed in, and no improvements or alterations shall be made to the License Area without the Licensor's written permission. Upon the termination of this License Agreement by expiration of the term or otherwise, the Licensee shall remove from the License Area all of its equipment, supplies, furnishings, and other personal property, and shall, if directed by the Licensor, also remove all fixtures and fixed improvements installed by the Licensee and shall repair any damage caused thereby. Property not so removed shall, at the Licensor's option, become the property of the Licensor. The Licensee shall leave the License Area in at least as good condition as received at the beginning of the License term.

In witness whereof the parties hereto have placed their hands and seals below as of the date first above written.

ATTEST:

BOSTON REDEVELOPMENT AUTHORITY

_____

By: _____
Paul L. Barrett, Director

T.S.K., INC. d/b/a STEAMING KETTLE, COFFEE SHOP

_____

By: _____
Aurelia S. Rita, Owner

Approved as to form:

_____
General Counsel
Boston Redevelopment Authority

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SPECIAL CONDITIONS

1. Licensee will pay all charges for taxes, water, sewer, gas, electricity, telephone, permits, fees and insurance connected in conjunction with their occupancy of the License Area.

2. The Licensee shall be responsible for all maintenance expenses, including extermination, cleaning to the gutters of the street and for the removal of any weeds and growth, trash, debris, or junk from the License Area and be responsible for removal of snow and ice from the sidewalks, and maintain it in a safe and clean condition at all times.

3. Licensee shall be responsible for any of their contractor(s) workmen, employees or agents working on or in the License Area for conformance with this License Agreement and for compliance for any laws, codes, rules, regulations or ordinances of any federal, state, or municipal board, agency, or commission and shall be responsible for obtaining all permits or licenses at their expenses. Licensee agrees that any expenses incurred by it in connection with its use and occupancy of the License Area will be exclusively the responsibility of the Licensee, and there will be no liability on the part of the Licensor.

4. The Licensee will have complete responsibilities for compliance with all federal, state and municipal codes and ordinances.

5. The Licensee will neither make any change in, nor erect nor place any building structure or sign (except no trespassing signs) upon the License Area unless the consent of the Authority thereto has first been obtained in writing. Licensee acknowledges any site improvements of the License Area shall be subject to landscape and design suggestion and review by Licensor's design staff. The Licensee, with exception of tables, chairs, umbrellas, fencing and/or bollards and chairs shall not add to or alter the License Area without prior written approval by the Director of the BRA.

6. No stock piling of spoil, refuse, trash or landfill materials will be permitted or allowed on the License Area.

7. The Licensee must provide and maintain proper insurance coverage in the amount specified in Paragraph #6 of the License Agreement, with the Boston Redevelopment Authority named as additional insured over the term of the License for use of the License Area.

8. Licensee shall not park vehicles on public right-of-ways adjacent to the License Area.

9. Licensee will permit the Licensor or its duly authorized agent to enter upon the License Area at any time, either to view or inspect the same, or to remove, without being held responsible therefore, any building, structure, sign or any material not approved by the Licensor.

10. Licensee will permit the Licensor or its future developer to enter upon the License Area at any reasonable time to inspect the License Area, take site measurements, perform test borings or similar subsurface explorations without disruptions. The Licensee shall use best efforts to coordinate its activities and the activities of any sublicense with other persons who are authorized by the Licensor to utilize the License Area.

11. Licensee acknowledges this is a temporary License and their occupancy is only for a limited interim use. Licensee agrees to remove the sidewalk cafe, decorative fences and all equipment incident to the operation of said cafe at the end of the season.

12. In conjunction with a general increase in the rents in the Government Center Project, the License Fee shall be subject to change upon thirty (30) days written notice to the Licensee but in no event will the fees increase more than the average increase borne by all similar licenses in the Government Center Project in the same year.

13. The Licensee assumes all liability, personal and private for any and all motor vehicles in the License Area.

14. Any monthly installment of the License Fee, which has not been paid by the Licensee within thirty (30) calendar days of the due date shall be subject to an interest charge of 1.5% per month on the outstanding balance.

15. Licensee shall provide and assume all costs of the License Area including police, fire, security guards, ambulances or sanitary services required to insure compliance with all laws, codes and ordinances. Licensee agrees that it will not occupy or use the License Area until it has received from the proper respective City of Boston departments, agencies, etc., all required Licenses or Permits and has furnished copies of said Licenses or Permits to the Licensor. Licensee will not apply for a liquor, beer or wine license.

16. The Licensee shall take adequate precautions to protect all existing walks, roads, streets, utilities, pipes, curbs, pavements, fencing, hydrants, signs, trees, and plantings on or off the premises and shall repair and replace or otherwise make good as directed by the Licensor, any damage so caused. All streets and sidewalks shall be kept free of all debris and equipment to provide safety and minimum inconveniences to the public.

17. The Licensee shall assist and provide backup during any emergency call for medical, fire, evacuation, or crowd control management; and maintain safe and effective evacuation procedures in the event of an emergency. In addition, Licensee shall respond to reported crimes, accidents, injuries and any emergency situation and stand ready to effect an emergency evacuation according to specific orders of City officials when appropriate.

18. Licensee shall immediately notify the Boston Police and Boston Fire Departments of any emergency requiring their service. The Licensee is expected to transmit all information accurately to both the Boston Fire Department and the Boston Police Department and to arrange a suitable meeting place in expediting their entrance to the License Area.

19. The Licensee shall not commence or continue to perform any work at the License Area unless the Licensee has in full force and effect all required insurance, and until all insurance certificates have been filed evidencing the specific insurance coverage required, nor shall any payment for work performed become due and payable until those certificates have been filed. The Licensee shall not permit any subcontractor, supplier or other person or organization to perform work unless the worker's compensation insurance requirements have been compiled with by that subcontractor, supplier, other persons or organization.

    All insurance polices provided to the foregoing provisions of these insurance requirements shall be in the form and written by companies satisfactory to the Licensor.

    As evidence of specified insurance coverage, the Licensee shall provide certificates of insurance itemizing the specific policies issued, the limits of coverage afforded, and the endorsements provided, all in accordance with the requirements of the forms prescribed in the License Agreement, or as required by the Licensor prior to execution or any extension.

    All the policies of insurance so required of the Licensee shall be endorsed to include as additional insureds: The Boston Redevelopment Authority as Licensor, the City of Boston, Authority's consultants, and each of their directors, officers, employees, representatives, or agents. The insurance afforded to these additional insureds shall be primary insurance. If the additional insureds have other insurance which might be applicable to any loss, the amount of insurance provided under the Licensee's policies of insurance shall not be reduced or prorated by the existence of other insurance.

    Without limitation of any other provisions of this License Agreement, if (a) the Licensee's agreement herein to insure or to name as additional insured the Authority or any other specified additional insured with respect to contractual

liability assumed by the Licensee under the terms of this License Agreement or otherwise, or (b) any contract of insurance between the Licensee or any Sub-Licensee and its insurance company shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that such circumstances shall not otherwise affect the validity or enforceability of the Licensee's agreements and obligations under this License Agreement nor the validity or enforceability of such contract of insurance, each of which shall be enforced to the fullest extent permitted by law.

20. Licensee shall lease an estimated eight (8') feet to allow for the continued pedestrian and vehicular access on City Hall Plaza and agrees to not block the plaza area between the stairwell and the Sears Crescent Building.

21. Licensee agrees to participate with the Licensor and City of Boston in the upkeep of the four (4) above grade planters adjacent to the License Area by fertilizing, planting, and watering the annual flowers and maintain them over the course of the License Agreement.

Steaming Kettle Coffee Shop
65 Court Street
Boston, MA 02108
(617) 227-6985

June 8, 1993

Mr. Paul Barret
Director of Boston Redevelopment Authority
9th Floor Boston City Hall
Boston, MA 02201

Dear Mr. Barret:

I am re-contacting you with respect to our previous request (please refer to attached letter dated June 17, 1992) concerning outdoor seating next to our establishment's location at City Hall Plaza. As with our previous request of ten tables seating 24 patrons would be located on the side as to not interfere with pedestrian traffic. Two of the ten tables would be equipped with umbrellas and all tables and chairs would be removed nightly. Trash receptacle and planting containers would be provided with an assortment of colorful flowers to enhance outdoor seating. Our employees would maintain the area throughout the day as well a sweeping the ground each evening.

Enclosed is a floor plan for your review. Your immediate response is requested since a competitor, Au Bon Bon, located two doors away already has outdoor seating. This has adversely impacted our business. I look forward to hearing from you as expediently as possible and I am willing to discuss any suggestions you may have.

Sincerely,

Aurelia Rita

Aurelia S. Rita
T.S. K. Inc.
d/b/a/ Steaming Kettle

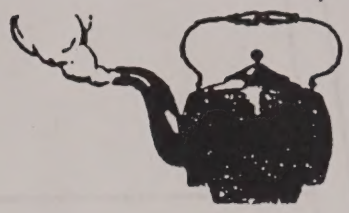
cc: Jerry Cavanaugh
Chief of Staff

Marie Tulley

The Steaming Kettle Coffee Shops

65 COURT SQUARE
BOSTON, MASSACHUSETTS 02108

TELEPHONE (617) 227-6985



Established 1868

June 17,1992

Maric Tulley
Real Property
Boston Redevelopment Authority
City Hall
Boston, MA

The Steaming Kettle, located at 65 Court St., would like to request outdoor seating next to its location at City Hall Plaza. I would like to place 10 tables with 24 chairs next to the side of the building so that it does not interfere with pedestrian traffic.

Two of the tables would have umbrellas. These tables and chairs would be brought inside nightly. We would have two trash recepticles and planting containers with a variety of colorful flowers to enhance the outdoor seating.

Employees from the store would continually maintain the area to insure that the area is clean, including sweeping the ground nightly.

Enclosed is a floor plan which outlines the area that would be used for outdoor seating.

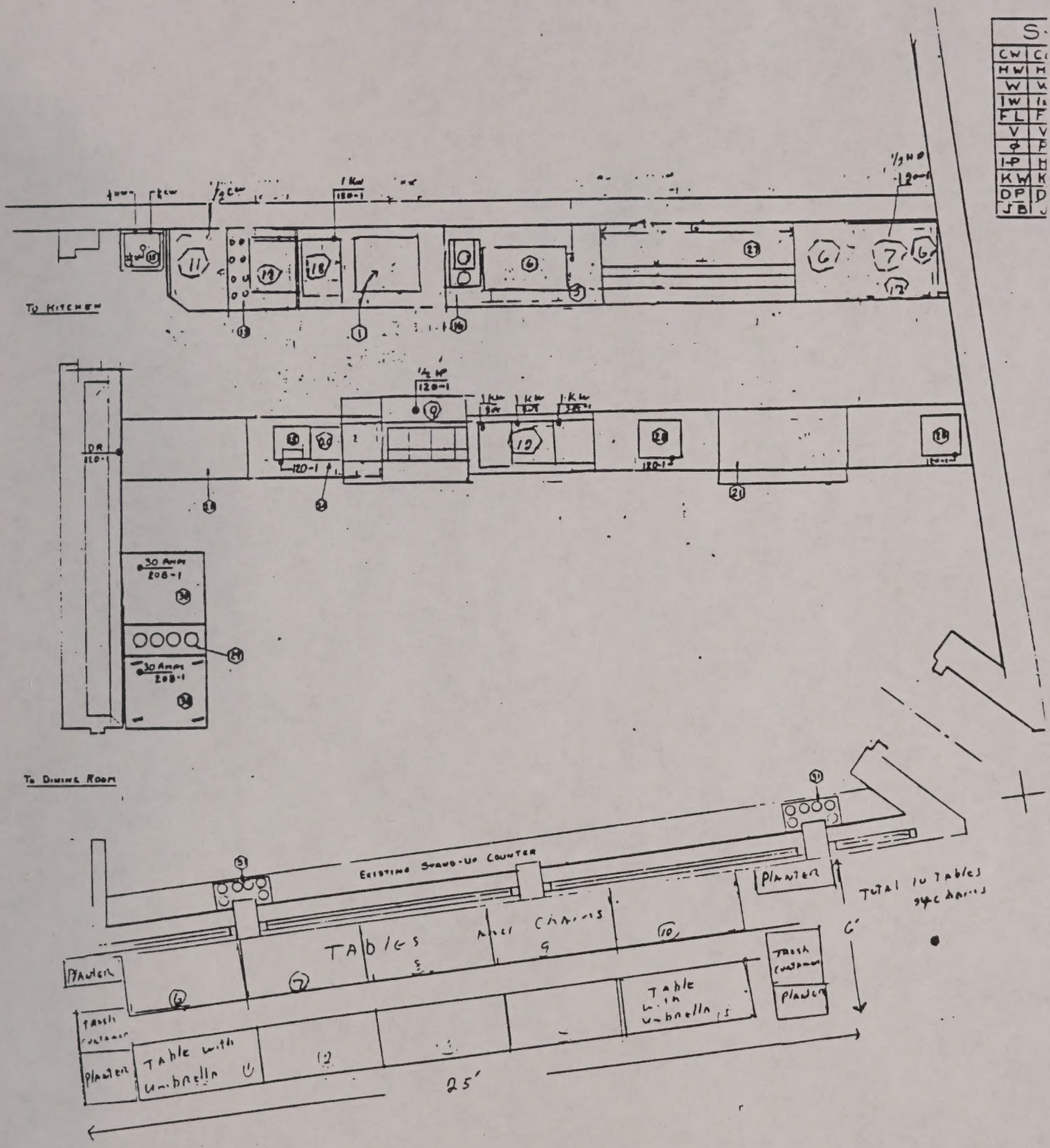
I look forward to hearing from you in regards to the above proposal with any suggestions which might improve the concept.

Very truly yours,

T.S.K. Inc
d/b/a Steaming Kettle

Aurelia Rita

HJS/eo
Enclosure


To Kitchen
To Dining Room
Existing Stand-up Counter
Planter
Tables and Chairs
Table with Umbrella
Trash Container
25'
6'
Total 10 Tables
9 Chairs